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November 21, 2019

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EPA Region 10

Office of the Regional Administrator

Via Certified Mail - Return Receipt Requested

Managing Agent
Inland Empire Paper Company
3320 N. Argonne Road
Spokane, WA 99212

Re: **NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

Dear Managing Agent:

We represent Waste Action Project, P.O. Box 9281, Covington, WA 98042, (206) 849-5927. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days' notice of Waste Action Project's intent to file a citizen suit against Inland Empire Paper Company under Section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations of the CWA occurring at the Inland Empire facility located at 3320 N. Argonne Road, Spokane, WA, which are described below. Inland Empire has violated and continues to violate "effluent standards or limitations" under 33 U.S.C. § 1365(f), including the conditions of its National Pollutant Discharge Elimination System ("NPDES") permit number WA0000825 (the "Permit") with respect to operations of and discharges of pollutants from the Inland Empire facility to the Spokane River as described herein. The Permit was issued by the Washington Department of Ecology on September 29, 2011, with an effective date of November 1, 2011 and an expiration date of October 31, 2016, but which Ecology has administratively extended and remains in effect.

EFFLUENT LIMITATION VIOLATIONS

Condition S1.A of the Permit requires that all discharges and activities authorized by the Permit must be consistent with the terms and conditions of the Permit. Condition S1.A further establishes discharge limitations for certain pollutants. The discharge of any of the specified pollutants more frequently than, or at a level in excess of, that identified and authorized by the Permit constitute a violation of the terms and conditions of the Permit. Condition S1.A.1 establishes the discharge limitations applicable to Inland Empire's "Outfall #001" from March through October and Condition S1.A.2 establishes the discharge limitations applicable to Outfall #001 from November through February. These conditions authorize only discharges of treated process wastewater at Outfall #001 subject to complying with the numeric effluent limitations identified. Inland Empire is in violation of the Permit discharge limitations as follows.

A. Conditions S1.A.1 and A.2 establish the effluent limitations for daily maximum BOD₅ as 1,555 lbs/day from March through October of each year and 6,655 lbs/day from November through February of each year. These Permit conditions also establish the effluent limitations for monthly average BOD₅ as 1,101 lbs/day from March through October of each year and 3,530 lbs/day from November through February of each year. Inland Empire has violated these limitations as follows, which are reasonably likely to recur:

Table 1 – Daily Maximum BOD₅ Violations

	<u>Date of Violation</u>	<u>Daily maximum BOD₅ concentration</u>
1.	4/3/19	>1890 lbs/day
2.	4/2/19	1260
3.	4/25/19	1312
4.	3/31/19	1140
5.	3/28/19	1254
6.	3/27/19	1334
7.	3/26/19	1496
8.	3/25/19	>1711
9.	3/24/19	>1915
10.	3/17/19	1276
11.	3/14/19	>3563
12.	3/13/19	>2296
13.	3/12/19	>3202
14.	3/11/19	>2544
15.	3/10/19	>1802
16.	3/3/19	>2842
17.	10/23/18	1427
18.	10/22/18	1823
19.	10/21/18	1537
20.	10/18/18	1174
21.	10/16/18	1365
22.	10/3/18	1233
23.	5/16 ¹	1844
24.	4/16	2219
25.	3/16	1700

Table 2 – Monthly Average BOD₅ Violations

	<u>Month</u>	<u>BOD₅ concentration</u>
1.	3/19	1519.29 lbs/day

B. Condition S1.A.1 also establishes the effluent limitations for daily maximum Phosphorus concentrations as 49.7 lbs/day from March through October of each year and establishes the effluent limitation for average monthly Phosphorus concentrations as 24.7 lbs/day from March through October of each year. Inland Empire has violated these limitations as follows, which are reasonably likely to recur:

¹ For March, April and May 2016 (among other dates), Inland Empire's Discharge Monitoring Reports did not report the date in the corresponding month when these maximum concentrations discharged.

Table 3 – Daily Maximum Phosphorus Violations

	<u>Date</u>	<u>Phosphorus concentration</u>
1.	4/17/19	>51.63 lbs/day

Table 4 – Monthly Average Phosphorus Violations

	<u>Month</u>	<u>Phosphorus concentration</u>
1.	4/19	28.88 lbs/day

The above-described violations reflect only what information currently available to Waste Action Project indicates. These violations are ongoing and reasonably likely to recur, including whenever Inland Empire discharges. Waste Action Project intends to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$54,833 per day per violation. In addition to civil penalties, Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs including attorney's fees.

Waste Action Project believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Inland Empire Paper Company under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Sincerely,

By: 

Marc Zemel
SMITH & LOWNEY, P.L.L.C.

cc: Andrew Wheeler, Administrator, U.S. EPA
Chris Hladick, Administrator, Region 10 U.S. EPA
Maia Bellon, Director, Washington Department of Ecology
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